

State of Maryland
State Labor Relations Board

In the matter of:)	
<i>Doyle R. Ham, Jr.,</i>)	
)	SLRB ULP
)	Case No. 2014-U-04
Petitioner)	
)	
v.)	
)	
<i>American Federation of</i>)	
<i>State, County & Municipal</i>)	
<i>Employees</i>)	
)	
Respondent)	
)	

Board Dismissal for Untimely Filing Based on Board Regulations

I. Background and Procedural Matters

On November 6, 2013, Petitioner Doyle R. Ham, Jr. filed an unfair labor practice (ULP) petition before the State Labor Relations Board (SLRB, the Board) against the American Federation of State, County, & Municipal Employees (AFSCME). The Executive Director of the SLRB sought a response to the petition from AFSCME, which was filed in due course. Upon receipt of AFSCME’s response, the SLRB Executive Director began a preliminary investigation as to the timeliness and, if needed, the merits of Mr. Ham’s claims. The SLRB Executive Director reviewed the pleadings and applicable statutory and regulatory language in preparation of issuing an Investigative Report and Recommended Determinations. The Executive Director’s Report was issued on February 28, 2014, and recommended dismissal of this matter due to untimely filing. Parties were given fifteen days, per Board regulations, to file a Request for Reconsideration in dispute of the Executive Director’s Recommendations. The SLRB, having received no dispute regarding the Executive Director’s Recommendations, is now prepared to issue a decision in this matter.

II. Board Review of Undisputed Facts and Positions of Parties

The Board agrees that Mr. Ham is an employee within the Department of Public Safety and Correctional Services (DPSCS). Further, the Board recognizes that DPSCS filed disciplinary charges against Mr. Ham in May of 2012. Mr. Ham elected to challenge the disciplinary action under Md. Correctional Services Code Ann. (“CS”) § 10-909. A trial board hearing was conducted.

Following the hearing, the parties entered into settlement negotiations, which culminated in a Disciplinary Action Settlement Agreement (“Settlement Agreement”), under which Mr. Ham was required to serve a five-day suspension without pay. The five-day suspension was effective beginning February 20, 2013. The Settlement Agreement was signed by the employer representative and Mr. Ham’s AFSCME representative on March 7, 2013; the Settlement Agreement was not signed by Mr. Ham.

Most of Mr. Ham’s allegations in his petition relate to the representation he received from AFSCME in the matter of his five-day suspension. In this regard, Mr. Ham presented information regarding a lack of communication from AFSCME and his own refusal to sign the Settlement Agreement. Mr. Ham appealed his five-day suspension on April 8, 2013. The appeal was dismissed by the Office of Administrative Hearings on September 4, 2013. Mr. Ham was represented on his appeal by the Maryland Association of Correctional and Security Employees (MACSE).

The SLRB notes that it has received a Motion to Dismiss from AFSCME regarding this case. The Board acknowledges that AFSCME’s position is that Mr. Ham’s filing is untimely, having, in AFSCME’s viewpoint, been filed more than ninety days after two relevant dates: April 8, 2013, when Mr. Ham filed his administrative appeal; and July 29, 2013, the date on which a letter was sent, on Mr. Ham’s behalf to OAH (with a copy to Mr. Ham), by a MACSE representative setting forth, inter alia, the reasons why the Settlement Agreement was invalid.

III. Analysis & Conclusion

COMAR 14.32.05.01(C) provides that an Unfair Labor Practice Complaint must be filed “within 90 days of the later of the alleged violation or following the time that a reasonable person would, upon exercising due diligence, have discovered the occurrence of the alleged violation.” Having reviewed the information presented by both Mr. Ham and AFSCME, it is clear that Mr. Ham had sufficient knowledge to allege a violation at the time he filed his administrative appeal in April 2013 and certainly no later than the July 29, 2013 date on which MACSE wrote to OAH on his behalf. Both dates occurred more than ninety days before Mr. Ham filed his petition with the SLRB.¹

IV. Order

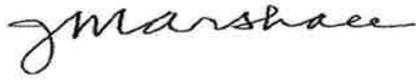
Based on the authority regarding timely filing of a case before the SLRB found in COMAR 14.32.05.01(C), the SLRB finds that Mr. Ham’s petition was untimely filed and grants AFSCME’s Motion to Dismiss.

Issue Date: March 4, 2016

Annapolis, Maryland

¹ In his petition, Mr. Ham also refers to “examples of problems” that were allegedly ignored by an AFSCME representative. The “examples of problems” are set forth in an e-mail from Mr. Ham dated September 21, 2010. To the extent that Mr. Ham’s petition is based upon matters set forth in Mr. Ham’s September 21, 2010 e-mail, the petition is untimely pursuant to COMAR 14.32.05.01(C).

For The State Labor Relations Board:



June M. Marshall, Chair



Sherry L. Mason, Member



Edward J. Gutman, Member



Susie C. Jablinske, Member



LeRoy A. Wilkison, Member

APPEAL RIGHTS

Any party aggrieved by this action of the SLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).